

REMARKS

This is in response to a restriction requirement under 35 U.S.C. 121, dated April 19, 2007. Claims 1-16, 19-32, 34-40 and 42-44 are pending. Claims 16 and 40 have been withdrawn. In the restriction requirement the Examiner stated that Species I, shown in figures 1-2, is distinct from Species II, shown in figure 3. Further, the Examiner stated that these species are distinct from Species III, shown in figures 6-7, and Species IV, shown in figure 8. Applicant elects Species I with traverse regarding the restriction requirement between Species I and Species II. Claims that are readable on Species I are amended claims 1-15, 19-32, 34-39, and 42-44.

The restriction requirement between Species I and Species II is improper because the only difference between Species I and Species II is the position of the moisture-proof film layer. In Species I, the moisture-proof film layer is below the acoustic underlayment. In Species II, the moisture-proof film layer is above the acoustic underlayment. The search and examination of the claims to Species II can be made without serious burden on the Examiner during the search and examination of the claims to Species I.

Restriction of the claims between Species I and Species II would not be expected to reduce the amount of prior art searching required by the Examiner. It would be expected that a prior art search for multi-layer flooring composites, including a moisture-proof film layer below an acoustic underlayment would include multi-layer flooring composites with a moisture-proof film layer above an acoustic underlayment. In view of the above remarks, Applicant respectfully requests that the requirement for restriction be withdrawn between Species I and Species II.


In the office action dated June 16, 2006, the Examiner rejected claims 3-12, 17-21, 23-30, 30, 34, 37, 38, and 40-44 under 35 U.S.C. 103(a). In the response dated December 15, 2006, Applicant made arguments in response to this rejection, including the argument that Van Wagoner and Crookston are non-analogous art to the present invention. Applicant affirms the non-analogous art arguments made in the December 15, 2006 response. Furthermore, sound transmission through roofs is not a generally recognized problem in the art. Consequently, no one skilled in the art would look to

roofing technology to solve a sound transmission problem with flooring. Therefore, one skilled in the art would not look to Van Wagoner and Crookston.

As an additional factor regarding patentability of the claims, the independent claims have been amended to define a composite that includes the acoustic layer positioned between the top floor layer and subfloor.

In view of the above amendments and remarks, Applicants have shown that the claims are in proper form for allowance, and the invention, as defined in the elected claims, are patentable. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections of record, and allowance of all claims. Further, Applicant requests withdrawal of the restriction requirement between Species I and Species II.

Respectfully submitted,


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